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Enforcement/Compliance

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Office of General Counsel
20th Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1548
Telephone: (615) 532-0131

July 3, 2007

**CERTIFIED MAIL,
RETURN RECEIPT
NO. 7160 3901 9849 4209 1245**

Mr. Thomas Hicks
193 Frank Diggs Drive
Clinton, Tennessee 37716

**RE: INTEX ENTERPRISES, LLC ("INTEX")
DIVISION OF WATER POLLUTION CONTROL
OGC CASE NO: 07-0242**

Dear Mr. Hicks:

Enclosed please find a Commissioner's Order and Assessment issued by Commissioner James H. Fyke on behalf of the Tennessee Department of Environment and Conservation in the above referenced matter. Please have Intex read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

If you have any questions, please feel free to contact me at (615) 532-0126.

Very truly yours,

A handwritten signature in black ink, appearing to read "Max A. Fleischer".

Max A. Fleischer
Assistant General Counsel

cc: Hugh Hannah
Division of Water Pollution Control

Enclosure

H:\OGC\MAF\NPDES\Order letter Intex.doc

**BEFORE THE STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
INTEX ENTERPRISES, LLC)	
)	
)	
)	
RESPONDENT)	CASE NO. 07-0242

COMMISSIONER'S ORDER AND ASSESSMENT

NOW COMES James H. Fyke, Commissioner of the Tennessee
Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee
Department of Environment and Conservation (hereinafter the "Department").

II.

Intex Enterprises, LLC (hereinafter the "Respondent") is an active
corporation authorized to conduct business in the State of Tennessee. Service of
process may be made on the Respondent through its registered agent, Thomas
Hicks, at 193 Frank Diggs Drive, Clinton, Tennessee 37716.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”) has occurred or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, pursuant to T.C.A. § 69-3-115 of the Act, the Commissioner has authority to assess civil penalties against any violator of the Act and, pursuant to T.C.A. § 69-3-116, to assess damages incurred by the state resulting from the violation. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”).

IV.

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as hereinafter stated, has violated the Act.

V.

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state.

Rule 1200-4-5-.07 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that will appropriately limit those harmful parameters present in the wastewater. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit.

VI.

Buffalo Creek and Hinds Creek, referred to herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters, et al,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Buffalo Creek and Hinds Creek have been classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. Additionally, Hinds Creek is considered an impaired water body due to *Escherichia coli*, loss of biological integrity from siltation, and habitat loss from alterations in stream-side or littoral vegetative cover from pasture grazing.

FACTS

VII.

The Respondent operates an industrial facility located in Anderson County at 193 Frank Diggs Drive, Clinton, Tennessee 37716 (hereinafter “the site”), and is the holder of individual NPDES Permit, TN0074713 (hereinafter “the permit”). The permit became effective on February 1, 2005 and expires on December 30, 2008. The Respondent engages in metal finishing activities, including coating and engraving for the automotive industry at the facility. The Respondent is authorized to discharge treated process wastewater from Outfall 003 to Buffalo Creek at mile 0.3 to Hinds Creek at mile 5.5 from the facility. Additionally, the permit established effluent limits for the Respondent, required the Respondent to conduct discharge monitoring and reporting, and required the Respondent to submit discharge monitoring reports (hereinafter “DMRs”). According to Part 1, Section D, Item 1 of the permit, monitoring results were required to be recorded monthly and submitted monthly.

VIII.

On October 24, 2006, the Division of Water Pollution Control (hereinafter “the Division”) issued a Notice of Violation (hereinafter “NOV”) to the Respondent for its failure to submit the monitoring results for August and September of 2006 for its facility.

IX.

On December 5, 2006, the Division notified the Respondent by letter that the Division had not received the monitoring results for the August, September, and October 2006, monitoring periods. In its letter, the Division explained that civil penalties could be assessed as a consequence of the failure to submit the required reports.

X.

On December 19, 2006, the Division conducted a site investigation in response to a citizen complaint of foam in Buffalo Creek. The Division observed a foamy discharge exiting an unauthorized outfall pipe on the right bank of Buffalo Creek across the road from Building 2 of the Respondent's facility. Additionally, the Division observed a grey residue on the rocks around the area of the discharge point in Buffalo Creek. Thereafter, the Division notified the Respondent of the discovery of the discharge.

XI.

On January 4, 2007, the Division visited the site to conduct a follow-up inspection and observed the same unauthorized outfall pipe discharging at a lower rate from the Respondent's facility. No foam was observed; however, the discharge had a soapy appearance. Upon further investigation, the Division discovered that a contractor for the Respondent was repairing a plugged process wastewater line, which was determined to be the source of the discharge observed

during the site investigation that the Division observed on December 19, 2006. The Division observed that that wastewater overflowed upstream just outside of Building 1 of the Respondent's facility and was entering storm drainage through a line carrying roof drainage. The Division observed the flow reaching Building 2's stormwater pond (which contained residue similar to that seen on the rocks in Buffalo Creek) crossing the road and coming out the storm drain pipe (which previously had a foamy discharge).

On this same day, the Division observed a foamy discharge entering Buffalo Creek from the Respondent's permitted outfall. Additionally, the Division requested the Respondent's annual chemical and biological survey reports for Buffalo Creek, which are required to be conducted by Part III, Section F of the Respondent's permit. Upon further investigation, the Division found no evidence that the Respondent had conducted the required biological in-stream survey reports.

XII.

On January 5, 2007, the Division issued a NOV for the violations observed during the site investigations that took place on December 19, 2006 and January 4, 2007. In its NOV, the Division requested the Respondent to attend a compliance review meeting scheduled for January 18, 2007, at the Division's Knoxville Environmental Field Office (hereinafter "KEFO") to discuss compliance issues at the Respondent's facility and possible solutions.

XIII.

On January 11, 2007, the Division received the August 2006 monitoring results from the Respondent.

XIV.

On January 18, 2007, the scheduled compliance review meeting was cancelled because the Respondent did not appear. Further, the Respondent did not contact the Division regarding the absence. After the Division contacted the Respondent, the meeting was rescheduled for January 23, 2007.

XV.

On January 22, 2007, the Division received the monitoring results for September, October, November, and December of 2006 from the Respondent. During the September 2006 monitoring period, the Respondent reported a monthly average concentration value for Total Chromium of 0.09 mg/l. The Respondent's permit at all times pertinent hereto contained a monthly average concentration limit for Total Chromium of 0.076 mg/l.

XVI.

On January 23, 2007, the Division held a compliance review meeting which was attended by the Respondent at the KEFO. During the course of the meeting, the Division notified the Respondent that a possible solution to the

Respondent's ongoing compliance issues was to have its facility connected to the City of Clinton sewer system.

XVII.

On January 24, 2007, the Division returned to the site to collect chemical samples and again observed the foamy discharge from the Respondent's permitted outfall entering Buffalo Creek. The discharge had a pH of 9.8 SU.

XVIII.

On January 25, 2007, the Division visited the site to conduct a follow-up investigation and again observed the same foamy discharge through the Respondent's permitted outfall.

XIX.

On January 26, 2007, the Division conducted in-stream biological sampling upstream and downstream of the Respondent's discharge. The Tennessee Macroinvertebrate Index (hereinafter "TMI") for the upstream sample was 26, slightly impaired, and the downstream sample was 18, moderately impaired. These results indicate an impact downstream of the Respondent's discharge.

XX.

The Division received a copy of a correspondence from the Respondent to the Clinton Utilities Board, dated January 27, 2007, requesting information regarding connection to the City of Clinton's sewer system. On January 30, 2007,

the Clinton Utilities Board responded, via e-mail, stating that it would contact the Respondent to discuss connection to the sewer system.

XXI.

On February 7, 2007, the Division issued a third NOV to the Respondent. The NOV detailed the violations observed during the site investigation that occurred on January 24 and 25, 2007. In the NOV, the Division again notified the Respondent that a possible solution to the compliance issues would be to connect to the City of Clinton's sewer system.

XXII.

On February 8, 2007, the Division received correspondence, via e-mail, from the Respondent regarding a February 2, 2007, letter addressed to the Clinton Utilities Board. The letter from the Respondent was addressed to the Clinton Utilities Board and stated that the Respondent would decline the option of connecting to the City of Clinton's sewer system.

XXIII.

On February 12, 2007, the Division conducted a follow-up site investigation and observed the same foamy discharge leaving the Respondent's permitted outfall and causing a condition of pollution to Buffalo Creek. Subsequently, the Division issued a NOV to the Respondent on this day for the observed discharge.

XXIV.

On February 13, and 14, 2007, the Division again observed the foamy discharge leaving the Respondent's permitted outfall, continuing to cause a condition of pollution in Buffalo Creek.

XXV.

On February 20, 2007, the Division held a follow-up compliance review meeting with the Respondent to discuss on-going compliance issues at the site. Again, the Division notified the Respondent that a possible solution to the issues occurring at the facility would be to connect to the City of Clinton's sewer system. The Respondent stated that this solution would not be cost-effective.

XXVI.

On February 22, 2007, the Division received correspondence from the Respondent regarding corrective actions taken, or to be taken, to address the issues discussed during the January 23, 2007, compliance review meeting. These actions included the following: installing new pH probes; cleaning of all water systems and filters; training of all system operators; redesigning the water outfall to discharge below the waterline; and cleaning the facility's holding pond.

XXVII.

On March 1, 2007, the Division issued a NOV to the Respondent for the violations observed during the site investigations that occurred on February 13 and February 14, 2007.

XXVIII.

On April 9, 2007, the Division received correspondence from the Respondent regarding the March 1, 2007, NOV. In its correspondence, the Respondent stated that it had taken the following actions to address the problems at the site:

- a) The Respondent had retained a contractor (S&ME) to perform biomonitoring;
- b) The Respondent had purchased a 7,600-gallon holding tank for final effluent holding, estimated to be installed by May 1, 2007;
- c) The Respondent had reduced daily reject water by 6,000 gallons;
- d) The Respondent had ensured pH probes were cleaned and calibrated weekly;
- e) The Respondent had begun conducting weekly upstream/downstream monitoring;

- f) The Respondent had begun conducting daily monitoring of its retention pond;
- g) The Respondent has retained a contractor (S&ME) to conduct an Environmental Assessment;
- h) The Respondent had begun conducting daily monitoring of the pond and discharge (no foam or discoloration was observed); and
- i) The Respondent's contractor, HOH Chemicals had completed an evaluation of the Respondent's equipment on February 27, 2007.

XXIX.

To date, the Division has not received the February and May 2007 monitoring results from the Respondent.

XXX.

The Respondent's permitted outfall is for a metal-finishing discharge to a small, vulnerable stream and is not considered a good candidate for wastewater disposal. Additionally, the stream provides habitat for a species listed as in need of management. Further, the Respondent has not been successful in complying with NPDES requirements, and significant degradation to this stream due to the discharge has been documented.

XXXI.

During the course of investigating this matter, the Division incurred damages in the amount of TWELVE THOUSAND SIXTY-SIX DOLLARS AND NINETY-SIX CENTS (\$12,066.96).

VIOLATIONS

XXXII.

By failing to comply with the terms and conditions of its permit, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114(b). T.C.A. § 69-3-108 reads in pertinent part as follows:

- (b) It shall be unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
 - (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. § 69-3-114(b) reads as follows:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXXIII.

By discharging wastewater into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. § 69-3-114(a) as referenced below, and §69-3-114(b), as referenced above.

T.C.A. §69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

XXXIV.

By discharging wastewater from a location other than a permitted outfall, the Respondent has violated T.C.A. §§ 69-3-108(b)(3) and 69-3-114(a), as referenced above.

ORDER AND ASSESSMENT

XXXV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115, and 69-3-116, I, James H. Fyke, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within SEVEN (7) DAYS of receipt of this Order, submit the monitoring results for the February 2007, monitoring period. The monitoring results shall be submitted to the Division's Enforcement and Compliance Section located at 401 Church Street, L&C Annex-6th Floor, Nashville, Tennessee 37243.
2. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, conduct the chemical and biological monitoring in Buffalo Creek as required by Part III, Section F of the permit. The results shall be submitted to the manager of the Division's KEFO, located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921. A copy shall also be submitted to the manager of the Division's Enforcement and Compliance Section, located at the address referenced in Item 1 above.
3. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit for Division approval, a plan to comply with effluent limitations prescribed in the subject permit. The plan shall include, but not be limited to, specific measures necessary to address the effluent violations and a schedule of implementation and projected completion of proposed activities.

4. The Respondent shall complete all corrective actions detailed in the approved plan within SIXTY (60) DAYS of the Division's approval of the plan.
5. The Respondent shall, by December 30, 2008, connect to the City of Clinton's sewer system and notify the manager of the Division's KEFO of completion.
6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of SEVENTY THOUSAND SEVEN HUNDRED SIXTY DOLLARS (\$74,760.00), payable as follows:
 - (a) The Respondent shall pay a CIVIL PENALTY of TWENTY THOUSAND DOLLARS (\$20,000.00) to the Department within THIRTY (30) DAYS of receipt of this Order and Assessment. Further, in the event of default, the Respondent is assessed an additional penalty of FIVE THOUSAND DOLLARS (\$5,000.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.
 - (b) The Respondent shall pay a CIVIL PENALTY of TWO THOUSAND DOLLARS (\$2,000.00) to the Department within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 1

above in a timely manner. Further, in the event of default, the Respondent is assessed an additional penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.

(c) The Respondent shall pay a CIVIL PENALTY of SIX THOUSAND DOLLARS (\$6,000.00) to the Department within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 2 above in a timely manner. Further, in the event of default, the Respondent is assessed an additional penalty of THREE THOUSAND DOLLARS (\$3,000.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.

(d) The Respondent shall pay a CIVIL PENALTY of TEN THOUSAND DOLLARS SEVEN HUNDRED SIXTY (\$10,760.00) to the Department within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 3 above in a timely manner. Further, in the event of default, the Respondent is assessed an additional penalty of FIVE THOUSAND DOLLARS (\$5,000.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.

(e) The Respondent shall pay a CIVIL PENALTY of FIFTEEN THOUSAND DOLLARS (\$15,000.00) to the Department within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 4 above in a timely manner. Further, in the event of default, the Respondent is assessed an additional penalty of SEVEN THOUSAND DOLLARS (\$7,000.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.

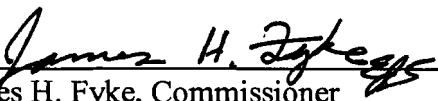
(f) The Respondent shall pay a CIVIL PENALTY of TWENTY-ONE THOUSAND DOLLARS (\$21,000.00) to the Department within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 5 above in a timely manner. Further, in the event of default, the Respondent is assessed an additional penalty of NINE THOUSAND FIVE HUNDRED DOLLARS (\$9,500.00) for each and every day that the default continues. Said additional penalties are due and payable to the Department as they accrue.

7. The Respondent is hereby assessed DAMAGES in the amount of TWELVE THOUSAND SIXTY-SIX DOLLARS AND NINETY-SIX CENTS (\$12,066.96) to be paid to the Department within THIRTY (30) DAYS of receipt of this Order and Assessment.

8. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.
9. For good cause demonstrated by the Respondent for missing a deadline set out in the Order, the Commissioner may waive the requirement that a penalty assessed by paragraph (6)(a) through (6)(f) be paid.
10. All payments referenced above shall be made payable to the Treasurer, State of Tennessee and shall be addressed to Max A. Fleischer, Assistant General Counsel, Office of General Counsel, Tennessee Department of Environment and Conservation, 401 Church Street, L & C Tower, 20th Floor, Nashville, Tennessee 37243. All payments shall reference case number 07-0242.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 3rd day of July, 2007.


James H. Pyke, Commissioner
Department of Environment and
Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the state of Tennessee.

At the conclusion of a hearing the Board has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (from \$0 to \$10,000.00 per day per violation).

Furthermore, in the event the Respondent is found guilty of the violations by the Board after a hearing, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to Max A. Fleischer, Assistant General Counsel, Office of General Counsel, Tennessee Department of Environment and Conservation, 401 Church Street, L&C Tower

20th Floor, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.

A handwritten signature in black ink, appearing to read "Max A. Fleischer", is positioned above a horizontal line.

Max A. Fleischer
Assistant General Counsel
Tennessee Department of
Environment & Conservation
401 Church Street, L&C Tower 20th Floor
Nashville, Tennessee 37243-1548

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